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No. 03-531

In The

Supreme Court of the United States

YARDARM RESTAURANT, INC.,

Petitioner,

vs.

THE CITY OF POMPANO BEACH,

Respondent.

On Petition For Writ Of Certiorari To The District Court Of Appeal Of Florida, Fourth District

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*, AND BRIEF *AMICUS CURIAE* SUPPORTING PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

DALE LEDBETTER hereby respectfully moves for leave to file the attached brief *amicus curiae* in this case. The consent of the attorney for Petitioner has been obtained. The consent of the attorney for Respondent was requested but refused.

Ledbetter's interest in this case arises from numerous facts. He is a citizen and property owner in Broward County. He will be substantially impacted as a citizen and property owner by the ruling of the lower court. He is familiar with the facts in this case and to permit the ruling of the lower court to stand is an affront to Ledbetter and all citizens of Broward County, Florida.

Respectfully submitted,

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

This case involves the trampling of rights of citizens to develop property in accordance with objective development criteria adopted by a local government. The Florida appeals court ruled that citizens have no monetary remedy when they lost their property due to the actions of local politicians who unlawfully blocked a perfectly lawful development, through an egregious course of conduct over many years.

Dale Ledbetter, the *amicus* herein, is a property owner and a citizen of Broward County, Florida, who has observed the progress of this case for several decades. The local politicians have run roughshod over a private citizen for personal, partisan reasons. The Florida courts have ruled that there is no remedy. This Court should consider the viewpoint of a local property owner and citizen. This brief is filed on his behalf and all others similarly situated.

STATEMENT OF THE CASE

Over thirty years ago, the Stephanis brothers Jim and Tom applied for approval to put a hotel on their property located in Broward County. Construction of the hotel was a lawful use authorized by local code at the time. Because of political opposition from local council members due to

[1] The parties have consented to the filing of this brief.

Counsel for a party did not author this brief in whole or in part. No person or entity, other than the *amicus curiae*, its members, or its counsel made a monetary contribution to the preparation and submission of this brief.

pressure from the neighbors, the Pompano Beach elected officials interfered in the administrative process. The City Commission did everything possible to block the development despite the fact that the Stephanis brothers were in full compliance with all local laws, codes and ordinances. The Stephanis brothers went to court repeatedly to force the City to comply with all local laws, codes and ordinances and to issue the necessary permits. In every instance, the Stephanis brothers prevailed, but the City continued to ignore rulings of the various courts and found a long menu of excuses to stall and block the development depriving the Stephanis brothers of their rights. After many years and huge legal expenses, the Stephanis brothers lost their property to foreclosure. The City then inappropriately purchased the property at a fraction of its value out of bankruptcy in what amounted to an illegal seizure.

The Stephanis brothers then filed an action to try to re-coup their losses from the City. The Stephanis brothers prevailed, but were reversed on appeal. The Florida appeals court held that there was no "taking" because the City actions only blocked one particular use, not all the uses for the property.

The second trial involved procedural and substantive due process. The Stephanis brothers won again, but the Florida appeals court reversed, holding that there was no remedy in this situation.

The Florida Supreme Court declined review in a divided court.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

Both trial courts independently of each other reached the determination that the City's actions were unlawful, egregious, and a violation of the Stephanis brothers' rights as property owners. The first trial court judge was firm in his description of what had happened:

> The course of action chosen by the city initially and throughout the years that the parties have been engaged in litigation must be described not only as arbitrary, but must also be equated with "unfair dealing." Every citizen (which includes Yardarm) has the right to expect that he will be dealt with fairly by his government. Unfair dealing by a municipality carries with it the attendant responsibility for the adverse affects it knows or should know it's deliberate action will have upon the parties with whom it is dealing . . .

The second trial court alluded to "bad faith" on the part of the City:

> The actions of the City of Pompano Beach were orchestrated by the members of the highest legislative body of the city, involving bad faith institutional bias . . .

In the first appeal the Florida appeals court ruled that there was no remedy for a "taking" despite the clear fact that the Stephanis brothers lost their property due to the improper "arbitrary" and "unfair" actions of the City. On the second appeal, the Florida appeals court ruled that there was no remedy for either substantive due process or procedural due process. The Florida courts have thus taken the frightening position that there is no remedy for the egregious course of action taken by a local government

resulting in the bankruptcy of a local citizen who only sought to do what the law allowed.

Florida appeals courts have taken the untenable position that a property owner is left with no remedy when local politicians choose to ignore their own laws, codes and ordinances to advance a political agenda.

The conclusion that there is no remedy for a property owner under the circumstances of this case has far reaching implications. This could and likely will impact the way local governments deal with citizens throughout the State of Florida. Absent a remedy, local government will be free to inflict injustice without accountability, and the rights of local citizens and landowners will be abused or destroyed. The implication reaches far beyond the Stephanis brothers' situation and will have an impact on any permitting or regulatory functions of local government.

The case law and authorities are well addressed in the Yardarm brief.

The *amicus*, as a citizen and on behalf of citizens of Broward County, State of Florida, respectfully requests that this Court accept the Petition for Writ of Certiorari to correct this long-standing injustice which has created an unworkable situation for local citizens.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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